IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO. 248 OF 2005
IN
SUMMONS FOR JUDGEMENT NO.166 OF 2004
IN
SUMMARY SUIT NO.3771 OF 2003

Ruprani Parikh — Appellant

vs.

Kotak Mahindra Primus Ltd. — Respondent No.1

Millennium Automotive Pvt.Ltd. — Respondent No.2

Mr.Rajiv Narula i/b. M/s.Jhangiani Narula & Associates
for the appellant.

Mr.B.P.Colabawala with Mr.Cyurus Ardeshir i/b.
M/s.Madekar & Co. for the respondent no.1.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 6th June 2005

P.C.

Heard Mr.Rajiv Narula, the learned counsel for the appellant and Mr.B.P.Colabawala, the learned counsel for the respondent no.1.

2. The learned counsel for the appellant contended before us that the plaintiff having waived the security provided in the Dealers Finance Agreement, the summary suit was not maintainable. The learned counsel relied upon the judgment of the Supreme Court in the case of State Bank of Saurashtra v. Chitranjan Rangnath Raja,

A.I.R. 1980 S.C. 1528.

3. In paragraph 12 of the plaint, the following averment has been made:

> "12. The plaintiffs state that though under the said Dealer Finance Agreement, the finance disbursed by the plaintiffs to Defendant No.1 was to be secured by hypothecated assets described in the schedule to the said Dealer Finance Agreement, no such hypothecated assets are found in existence. The plaintiffs hereby waive the security provided in the said Dealer Finance Agreement."

4. The paragraph 12 read as a whole cannot be read to mean that the plaintiff has waived any security which was actually in existence. The liability of the surety is co-extensive with that of debtor. In the Deed of Guarantee also the appellant has taken upon itself the liability as that of a principal debtor and not merely as a surety. The the liability of the appellant is thus that of the principal debtor. As a matter of fact the impugned order records that the amounts are due and payable by the present appellant (defendant no.1) to the plaintiff is admitted. The defence, thus, raised by the appellant is only moonshine. The learned trial Judge showed the indulgence in granting conditional leave to the appellant to defend on depositing the sum of Rs. 50 lacs.

5. We do not find any justifiable ground to interfere

with the impugned order.

6. Appeal is dismissed in limine.

7. Time for deposit of Rs. 50 lacs is extended to 20th July 2005.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)